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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,698	08/01/2001	Jorgen Fenger	FENDER 1	1813
1444	7590	05/04/2004	EXAMINER	
BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			TRAN, KHOA H	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/830,698

Applicant(s)

JORGEN FENGER

Examiner

Khoa Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 23-51 and 53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-43, 46-48, 50, 51 and 53 is/are rejected.
- 7) ☒ Claim(s) 44, 45 and 49 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 April 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

With respect to applicant's argument filed on October 17, 2003 stating that the Finality of the Office action is premature because the amendment filed on May 20, 2003 did not necessitate a new ground of the rejection since the recitation of "the rubber-elastic portion and elongated in the crosswise direction", see claim 23, lines 15-16, was recited in the original claims. This argument is found to be persuasive and the finality of the previous Office action has been withdrawn. Accordingly, the amendment filed October 17, 2003 has been entered and a new rejection advances below.

***Drawings***

The proposed drawings correction and/or the proposed substitute sheets of drawings, filed on April 04, 2003 have been approved.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 23-51 and 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 23 and 53 are misdescriptive and/or inaccurate because the retaining means (5) does not have a stop member (11, 14, 37) as set forth on line 16 of the claim. Claim 38 is misdescriptive and/or inaccurate because recitation of plural "holders" on the retaining means (5). Note that the retaining means (5) has only one holder to hold signs and labels in the channel. Claim 40 is misdescriptive and/or inaccurate because of the recitation of plural "holders" on the carrying means (6). Note that the carrying means has only one holder to hold signs and

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labels in the channel. With respect to claim 48, it's unclear to how many carrying devices are being claimed since claim 47 sets forth an additional carrying device as an intended use with the carrying device, and claim 48 positively sets forth the additional carrying device with the device, see line 3 of claim 48, e.g., "said suspension means on the additional carrying device". With respect to claim 51, it's unclear what constitutes "a supporting structure" on the carrying device that is extruded of elongate metal blank.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23-31, 37, 50, 51, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jencka in view of Zuzack. Jencka discloses a carrying device for retaining flat box shaped items comprising a front for receiving an item (50), a back (38), an upper retaining means (36) elongate in crosswise direction, see Figure 6, having on an underside a rubber-elastic portion (18) that has a lip portion (24) pointing toward the back, see Figures 3-5, and an lower carrying means (40) elongate in crosswise direction placed below and connected to the upper retaining means, wherein the lower carrying means has a substantially smooth and plane horizontal upper supporting surface. Jencka does not teach a stop member extending in a crosswise direction on the back of the carrying device. However, Zuzack teaches a stop member (30) extending in a crosswise direction on the back of the carrying device. See Figures 2 and 4. It would

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have been obvious to one of ordinary skill in the art at the time of the invention was made provide the back of the carrying device of Jencka with the provision of a crosswise direction stop member as taught by Zuzack in order to enable to urge the items out of the carrying device when items are placed with the largest face arranged in a crosswise direction in the carrying device. With respect to claims 26-31, it would have been an obvious matter of engineering design choice as determined through routine experimentation and optimization for one of ordinary skill in the art to routinely dimension the width of the carrying means from the front of the carrying means to be less than 20 mm or about 10 mm, as measured from the stop, and to routinely dimension the distance of the lip of the rubber-elastic portion to be less than 15 mm or about 5 mm, as measured from the stop, for a particular application thus producing no new and unexpected results. With respect to claim 51, as best as understood, at the time of the invention was made, it would have been an obvious matter of engineering choice of design to one of ordinary skill in the art to have made the carrying device of Jencka out of extruding elongate metal blank since metal material is notorious old and well known property per se and commercially available for production of a carrying device for holding CD, and it would have been obvious to one of ordinary skill in the art to utilize the known material to produce the carrying device therefrom according to its suitability of intended use, i.e., to have a strong and durable carrying device, thus it does not produce any new matter.

Claims 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jencka in view of Zuzack as applied to claims 23-31, 37, 50, 51, and 53 above, and

further in view of Krinke et al. The front of the retaining means and the carrying means of Jencka do not have display signs and labels holders. However, Krinke et al. teach a display signs and labels holder (34) attaches to a carrying device. See Figures 1, 2, 4, and 5. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide at the front of the retaining means and the carrying means of Jencka in view of Zuzack with the provision of display signs and labels holders as taught by Krinke et al. in order to enable to hold signs and labels for the purpose of identifying the items that store on the carrying device.

Claims 23-31, 37, 42, 43, 46-48, 50, 51, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krattiger in view of Jencka. Krattiger discloses a carrying device for flat box shaped items with the larges faces of items arranged in vertical planes comprising a carrying device (2) having a front (16) for receiving the items (14), a back (18), an upper retaining means (8) elongate in the crosswise direction and a lower carrying means (10) elongate in crosswise direction placed under the upper retaining means and rigidly connected to the upper retaining means. The lower carrying means (10) has a substantially smooth and plane horizontal upper supporting surface (6a) and a stop (20a and 20) that elongates in a crosswise direction and being adjacent to and placed behind the upper supporting surface (6a), see Figures 2 and 3. Krattiger does not teach the retaining means having on an underside a rubber elastic portion. However, Jencka teaches a carrying device (30) having a retaining means (36) that has on an underside a rubber elastic portion (18) with a lip portion (24) pointing toward the back (38) of the carrying device, see Figures

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3-5. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the retaining means of Krattiger with the provision of a rubber elastic portion as taught by Jencka in order to retain items on the carrying device in place. With respect to claims 26-31, it would have been an obvious matter of engineering design choice as determined through routine experimentation and optimization for one of ordinary skill in the art to routinely dimension the width of the carrying means from the front of the carrying means to be less than 20 mm or about 10 mm, as measured from the stop, and to routinely dimension the distance of the lip of the rubber-elastic portion to be less than 15 mm or about 5 mm, as measured from the stop, for a particular application thus producing no new and unexpected results. With respect to claims 42, 43, and 46-48, Figures 2 and 3 of Krattiger illustrates the carrying device having a suspension means (a nail) for suspending the device on a wall and a supporting means of legs (7a) for supporting the device against the wall on which the carrying device is suspended. The carrying device further has a catching means (6) that locks with a recess on an additional carrying device and suspends below the carrying device. With respect to claim 51, as best as understood, at the time of the invention was made, it would have been an obvious matter of engineering choice of design to one of ordinary skill in the art to have made the carrying device of Jencka out of extruding elongate metal blank since metal material is notorious old and well known property per se and commercially available for production of a carrying device for holding CD, and it would have been obvious to one of ordinary skill in the art to utilize the known material to produce the carrying device therefrom according to its suitability

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of intended use, i.e., to have a strong and durable carrying device, thus it does not produce any new matter.

Claims 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krattiger in view of Jencka as applied to claims 23-31, 37, 42, 43, 46-48, 50, 51, and 53 above, and further in view of F. A. Nuttall. Krattiger does not teach the carrying means having steps of saw-tooth shaped with vertical edges forming peaks of serrations. However, Nuttall teaches the carrying means (29) having steps of saw-tooth shaped with vertical edges forming peaks of serrations (39). See Figures 3 and 4. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the carrying means of Krattiger in view of Jencka with the provision of saw-tooth serrations as taught by Nuttall in order to prevent the items that place on the carrying means from sliding. With respect to claims 35 and 36, it would have been an obvious matter of engineering design choice as determined through routine experimentation and optimization for one of ordinary skill in the art to routinely dimension the saw-tooth shaped steps to be between 0.2-1 mm or 0.5 mm below the plane of the supporting surface for a particular application thus producing no new matter and unexpected results.

Claims 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krattiger in view of Jencka as applied to claims 23-31, 37, 42, 43, 46-48, 50, 51, and 53 above, and further in view of Wright et al. The retaining means and the carrying means of Krattiger has a vertical surface (6a) thereat the front but the vertical surface does not



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have an upper extending rib and a lower rib so that the extending ribs with the vertical surface can form an open channel to hold signs, labels and indicia therebetween.

However, Wright et al. teach an upper extending rib and a lower rib extend between a vertical surface such that the extended ribs and the vertical surface forming a channel to retain signs, labels and indicia. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the vertical surface of Krattiger in view of Jencka with the provision of an upper rib and a lower rib as taught by Wright et al. in order to enable to hold signs, labels and indicia for purposes of identifying the items store on the carrying device.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bearth, Pickles et al., Jonker, Moore, Gebka, Hanle et al., C. R. Gurgo, and Schnoor et al. are cited to show similar configurations of the carrying device.

***Allowable Subject Matter***

Claims 44 and 49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

Claim 45 is objected to as being dependent upon a rejected base claim.

The following is an examiner's statement of reasons for allowance:

Claim 44 is allowed over the prior art of record because there is no prior art of record that teaches or suggests a carrying device possessing the entire combination of features specified by the claims. In particular, while features may be individually known,

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there is no suggestion or motivation from the prior art to make the proposed modification to combine that would render the prior art invention being modified satisfactory for its intended purpose. Specifically, there is no teaching or suggestion of "the supporting means are adjustable lengthwise".

Claim 49 is allowed over the prior art of record because there is no prior art of record that teaches or suggests a carrying device possessing the entire combination of features specified by the claims. In particular, there is no teaching of "an interlocking arrangement is provided by a recess in both the suspension means and the catching means forming together a channel when assembled, in which channel a stiff wire is inserted and thus locking the suspension means and the catching means together."

#### ***Response to Arguments***

Applicant's arguments with respect to claims 23-43, 46-48, 50, 51, and 53 have been considered but are moot in view of the new grounds of rejection.

With respect to applicant's remarks to the drawings objection under 37 CFR 1.83(a) that "a stop" constitutes a wall member (11), a front of the wall (14), or the beads (37) and the support means constitutes the member 33 in the drawing are found to be persuasive and therefore the drawings objection under 37 CFR 1.83(a) has been withdrawn.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 9:30 A.M. to 7:00 P.M.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group before a final Office action is (703) 872-9306 and after a final Office action is (703) 872-9327.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoa Tran

March 02, 2004



LESLIE A. BRAUN  
SUPERVISORY PATENT EXAMINER